

## **REMARKS**

### **FORMAL MATTERS:**

Claims 9-27 were examined. Claims 9, 15-20, 25 and 26 were rejected. Claims 10-14, 21-24 and 27 were objected to as being dependent upon a rejected base claim but were otherwise indicated to be allowable. Claims 1-8 were previously canceled.

By this Amendment, claim 9 has been amended to include language which clarifies the claim. Additionally, the Cross-Reference section has been updated and the two paragraphs identified by the Examiner have been amended.

Claims 9-27 remain pending after entry of the amendments set forth herein.

### **OBJECTIONS TO THE SPECIFICATION**

The cross-references to related applications on page 1 require updating. The cross-references have been updated. A blank identifying a PCT application on page 10, line 11 was also objected to. Reference to the U.S. and PCT applications has been deleted and replaced by reference to the corresponding issued U.S. patent. A structure on page 11, line 9 was incorrectly referenced. Correction has been made.

### **REJECTIONS UNDER §102**

Claims 20, 25 and 26 were rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Application No. 0396016 (EP '016).

Applicants respectfully disagree with this rejection as the characterization of the EP '016 apparatus in the Office Action is ambiguous and confusing for at least the following reasons: (1) it appears that structures from two different embodiments of EP '016 are being unclearly combined in order to force a correlation with the claimed structure, e.g., conduit 308 of Fig. 23 has nothing to do with apparatus 400 of Fig. 24; (2) the rejection does not specify what component of EP '016 correlates to the claimed hub and bore; and (3) conduit 422 is identified as corresponding to the claimed planar test body; however, conduit 422 is not planar.

Notwithstanding the above ambiguity, Applicants do not find any disclosure of the claimed structure of claims 20, 25 and 26 in EP '016. Accordingly, withdrawal of the rejection is respectfully requested.

### **REJECTIONS UNDER §103**

Claims 9 and 15-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over EP '016 in view of WO 97/38126 (WO '126).

Again, it is unclear to Applicants as to the correspondence made in the Office Action between the limitations of the subject claims and the structure of Figs. 13 and 14 of EP '016. Passage 200 is characterized as corresponding to the claimed test space. However, nothing in EP '016 supports such an interpretation. Passage 200 is merely just that—a passage for transporting blood from needle 16 into syringe 14. Even if such an interpretation was reasonable, the so-called “test space” (passage 200) is not substantially perpendicular to the conduit 16 as required by claim 9.

It is also unclear from the rejection what structure of EP '016 corresponds to the claimed reservoir. Taking the Office Action's characterization of passage 200 as corresponding to the claimed test space and the absorbent material characterized as corresponding to the claimed test membrane, it is unclear what structure corresponds to the reservoir since claim 9 requires that the test space be situated between the test membrane and the reservoir. In Fig. 13 of EP '016, the only structures between which “test space” 200 is positioned are the absorbent material and the syringe housing.

Moreover, there is no disclosure in EP '016 of a configuration which meets the requirement of claim 9 that the test space (what the Office Action equates to passage 200) be configured “to be in contact with said fluid after said fluid has accumulated within the reservoir to a transfer volume of fluid, wherein said test space is sized to wick said fluid from said reservoir when said fluid in said reservoir attains said transfer volume.” In fact, EP '016 supports just the contrary. In column 11, lines 14-20 of EP '016, it states that “the passage 200 is in fluid communication with the chamber 202 through multiple conduits or capillaries 206.... As the blood flows through the passage 200 from the needle 16 to the syringe 14, the absorbent material in the chamber 202 draws blood from the capillaries 206.” The transfer of blood from the passage to the chamber is immediate by way of the capillaries. Unlike the Applicant's claimed invention, the fluid does not first accumulate in the reservoir until a transfer volume is attained prior to coming into contact with the chamber.

Finally, the Applicants find no support in WO '126 which makes up for the deficiencies of EP '016. Accordingly, neither EP '016 nor WO '126, taken alone or in combination with each other, disclose, teach or suggest the claimed subject matter of claims 9 and 15-19.

**ALLOWABLE CLAIMS**

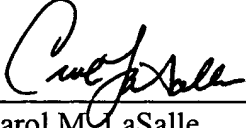
In the Office Action, it was indicated that claims 10-14, 21-24 and 27 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for the indication of allowance. However, in light of the above arguments, Applicants respectfully request that the Examiner allow all of the claims.

If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number LIFE-096CON4.

Respectfully submitted,  
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Date: 04/11/05

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